

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,744
)
Appeal of)

INTRODUCTION

The petitioner has filed a motion for the Board to reopen the dismissal of her case due to her failure to appear at a prior scheduled fair hearing.

DISCUSSION

The petitioner is a six-year-old girl. Since 1997, she has been receiving chiropractic care for the treatment of asthma. The underlying issue in this case is whether such treatment is effective and medically necessary. The petitioner's mother filed an appeal with the Human Services Board on January 7, 1997, after the Department of Social Welfare denied the petitioner a request for an extension of Medicaid benefits to cover chiropractic care for more than 10 visits annually.

The appeal was initially heard on January 22, 1997, at which time the Department informed the petitioner's mother and the hearing officer that it would consider an extension under Medicaid of the ten-visits-per-year maximum prescribed in the regulations under chiropractic services for children if the petitioner could furnish a statement from her chiropractor documenting the medical need for such visits. The petitioner's mother agreed to try to get this

documentation.

The hearing was reset on February 12 and on March 12, 1997, but was continued each time at the request of the petitioner's mother. The hearing was reset on April 16, 1997, at which time the petitioner's mother appeared with a letter from her daughter's chiropractor stating, without any clinical support, that chiropractic care had improved the petitioner's asthma. At this time the Department reiterated its position that the need for further chiropractic treatment had not been adequately verified. The hearing was reset on June 25, 1997, to allow the Medicaid division to contact the petitioner's chiropractor directly to discuss the case.

The hearing was reset for June 25, 1997, at which time nobody appeared for the petitioner. On June 30, 1997, the Board sent the petitioner a letter noting her failure to appear at the last scheduled hearing date and requiring her to contact the Board within 7 days or have her case dismissed. On July 2, 1997, an attorney from the Disability Law Project called the Board to say that she would be representing the petitioner and she requested a continuance until August 6, 1997, when she would be available to attend a hearing. (This was followed up by a letter to the Board dated July 3, 1997.)

On August 6, 1997 the petitioner's attorney informed the Board through the Department's attorney that the matter

could be continued indefinitely. The Department's attorney represented to the hearing officer that the petitioner's attorney was seeking medical evidence to support the petitioner's claim for extended chiropractic services. The Board confirmed this status in a memo to the parties dated August 11, 1997.

Nothing more was heard from the petitioner or her attorney for over a year. On October 6, 1998, the Board sent the petitioner's attorney a letter that it assumed the matter was settled and would dismiss the case unless it heard otherwise within 10 days. On October 8, 1998, the petitioner's attorney's office contacted the Board to report that the petitioner's attorney would be out of the office until October 15, but that she would contact the Board upon her return.

On November 4, 1998, the petitioner's attorney informed the Board by phone and letter that she was no longer representing the petitioner but that the petitioner's mother still wished to pursue the appeal.

On November 9, 1998, the Board sent a letter to the petitioner's mother requesting information how she wished the Board to proceed. (This letter was resent on November 16, 1998, after the Board learned the petitioner had moved.) On November 24, 1998, the petitioner's mother called the Board to request that the matter be reset for hearing.

The matter was reset for hearing on December 30, 1998,

at which time the petitioner's mother appeared. The petitioner's mother introduced office notes outlining the petitioner's history of asthma but she had no further medical evidence regarding the necessity of chiropractic visits for her daughter. However, the Department informed the mother and the hearing officer that during the pendency of the case the Department's policy had changed reflecting the changeover of most Medicaid recipients, including the petitioner, to managed care plans. According to the Department, chiropractic visits for children could be covered if specifically requested by the petitioner's primary care physician. The parties agreed to continue the matter to allow the Department to contact the petitioner's primary care physician to obtain justification for past and future chiropractic visits. The matter was reset for hearing on January 20, February 10, and March 10, 1999, but was continued each time at the request of the petitioner's mother.

The matter was reset for hearing on March 24, 1999, at which time nobody appeared for the petitioner. On March 29, 1999, the Board sent its standard "7-day letter" to the petitioner's mother noting her failure to appear and advising her to contact the Board within 7 days to avoid having her case dismissed. The Board received no response to this letter. At its meeting on May 5, 1999, the Board dismissed the petitioner's appeal.

On May 26, 1999, the petitioner's mother called the Board to request advice on how to proceed. The Clerk of the Board advised her of her rights to appeal and to file a motion to reopen her daughter's case. On June 8, 1999, the Board received a written request from the petitioner's mother to reopen the case and, in the alternative, a notice of appeal to the Vermont Supreme Court.

A hearing on the petitioner's Motion to Reopen was heard on June 16, 1999. At that time the petitioner's mother admitted that she had received all the prior notices from the Board and that her only further evidence in the matter was the following letter, dated February 9, 1999, from her daughter's treating physician, which had already been furnished to the Department:

I received your letter regarding (petitioner) and her chiropractic care for the treatment of asthma. I'm glad to hear that (petitioner) has been helped with chiropractic treatment. Unfortunately, I am not qualified to say whether chiropractic care does or does not help reduce the frequency and severity of asthma.

I hope that with (Chiropractor's) help you will be successful in obtaining insurance coverage for (petitioner). Even if you are not, I would hope that you continue chiropractic treatment for (petitioner), since you feel it does help her.

ORDER

The petitioner's request to reopen the matter is denied.

REASONS

Fair Hearing Rule No. 14 provides:

Failure to appear. If neither the appellant nor his or her representative appears at the time and place noticed for the hearing, the clerk shall inquire by mail as to what caused the failure to appear. If no response to this inquiry is received by the agency or the hearing officer within 7 working days of the mailing thereof, or if no good cause is shown for the failure to appear, the board may dismiss the appeal at its next regular meeting.

On occasion the Board has reopened decisions on the basis of a compelling showing that failure to do so would create an unjust result. See, e.g., Fair Hearing Nos. 11,281 and 9,403. It cannot be concluded that the petitioner in this case has made such a showing.

The Medicaid regulation regarding chiropractic services includes the following:

Chiropractic services for recipients under the age of 12 require prior authorization from the Medical Review Unit, Medicaid Division, Waterbury. Clinical review data pertinent to the need for treatment must be submitted in writing.

Coverage is limited to ten treatments per patient per calendar year. Exceptional or unusual circumstances may justify a request by the chiropractor for additional coverage. Requests must contain full clinical data, x-rays or other documentation as may be required by the Medicaid Medical Review Unit, Medicaid Division, Waterbury, to evaluate the medical necessity for continued care.

The petitioner has now had two and a half years, part of that time with the help of an attorney, to produce supporting medical evidence regarding the efficacy of chiropractic treatment for her asthma. In that time she has produced only the above statement from her treating physician, which, at best, can only be viewed as noncommittal.

In light of the above, there is no compelling reason for the Board to reopen this matter. The petitioner is free to reapply for extended chiropractic services should her physician request it.

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